



RSA No. 1213 of 2023 (O&M) 1

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No. 1213 of 2023 (O&M)
Reserved on : 18.08.2025
Date of Pronouncement :- 22.08.2025**

Om Parkash

...Petitioner

Versus

Jugal Kishor and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. R.N. Lohan, Advocate for the appellant.

Mr. Viranjeet Singh Mahal, Advocate for the respondents.

VIRINDER AGGARWAL, J.

1. Appellant-defendant has filed this appeal against the concurrent judgment and decrees passed by the Courts below in a suit for permanent injunction filed by respondent-plaintiff Jugal Kishor claiming permanent injunction restraining defendants from preventing plaintiff from raising construction of wall from Point I to F as shown in the site plan and from interfering in the peaceful possession of the plaintiff over agricultural land fully detailed and described in the head note of the plaint on the allegations that plaintiff is in exclusive possession over the suit land and few years ago he has raised boundary wall around the land and there is a well bearing No. 27. A Parta of well was left during consolidation for enjoyment of the well. Plaintiff has installed electric tubewell. During consolidation of holdings a Rasta of 3 Karm was left along with Northern Killa line of Killa No. 9/2 and 9/1 and Killa No. 8 of Rect. No. 3 for the plaintiff and his family members. Rasta reached upto the well and thereafter there is dead end. The predecessors of the plaintiff approached for Rasta from Western side to reach

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the well and Additional D.C.-III Rohtak has provided 1 Karam Rasta to father of plaintiff from Western side. Rasta is not a public way and is only meant for co-sharers of the well. Defendants are not co-sharers in the well and have no right, title or interest in the agricultural land fully surrounded by the boundary wall. They have no right to use Parta of the well No. 27 nor any Rasta is left for defendants for their egress or ingress to their houses. The houses of the defendants are having separate Rastas. During rainy season of 2008, some portion of the boundary wall between Point I to F of Eastern wall fell down and now defendants are putting hindrance in reconstruction of the fallen portion of the wall claiming the Rasta to be a public way. On notice defendant No. 1 contested the suit on the grounds that site plan submitted by the plaintiff is not in accordance with existing position at the spot. It was denied that any boundary wall was raised or that plaintiff and his family members are owners of the Rasta. Defendants alleged that number of persons purchased their plots out of Khasra numbers as detailed in the head note of the plaint and Rasta is used by all to reach their respective houses and plaintiff has filed the present suit with the sole intention to block public passage. Defendants have purchased property out of Khasra number in the shape of plots and passage has been kept at the place and there is a public passage. It was denied that boundary wall from Point I to F in the site plan fell down or that defendants are threatening to obstruct plaintiff from raising construction but it is alleged that plaintiff has no right to block the Rasta which is meant for public at large. Replication was filed reiterating the contents of the plaint and denying the averments of the written statements.

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2. From the pleadings of the parties, the following issues were framed :-

i) Whether the plaintiff is entitled to decree for permanent injunction as prayed for? OPP

ii) Whether the suit of the plaintiff is not maintainable in the present form? OPD

iii) Whether the plaintiff has suppressed the material facts from the court and has not come with clean hands before the court? OPD

iv) Whether the plaintiff has no locus standi and no cause of action to file the present suit? OPD

v) Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD

vi) Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD

vii) Relief.”

3. In order to peruse these issue both the parties were afforded opportunities to lead evidence and after hearing arguments the learned Civil Judge decreed the suit.

4. Aggrieved by the judgment and decree so passed, the appeal was preferred by the appellant and the same was dismissed by the learned Additional District Judge, Panipat.

5. Aggrieved by that judgment and decree passed by learned Additional District Judge, Panipat, the present appeal has been preferred. Notice was served upon the respondent-plaintiff. Record requisitioned.

6. I have heard arguments and gone through the file carefully.

7. Learned counsel for the respondent-plaintiff argued that there is no illegality and infirmity in the findings recorded by the learned Courts

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below as there is ample evidence on record that Rasta was meant for use of plaintiff and his family members and that appeal be dismissed.

8. The only point on which the judgments and decrees passed by the Courts below has been assailed by counsel for the appellant-defendant is that plaintiff himself has pleaded in the plaint and led evidence that the Rasta was left during the consolidation proceedings and it is not proved by producing any document of the consolidation proceedings that Rasta was exclusively meant for plaintiff and his family. It was further argued that after consolidation plaintiff and his family has sold number of plots to number of persons including the appellant-defendant out of that land for the use of which Rasta was carved out during consolidation proceedings. Learned Additional District Judge has recorded his findings in para Nos. 12 to 14 of the impugned judgment which reads as under :-

“12. It is the plea of the respondent no.1 that the well comprised in killa no.27 and the land adjacent to it belongs to him and that he has installed a tubewell in the said well. It is also his plea that the passage of 3 karams which was left during consolidation was a private passage meant to be used for the landholders whose land is adjacent to the well. Since, the respondent no.1 is in possession of the land adjacent to the well and he has constructed a factory, therefore he is well within rights to raise construction of a boundary wall on his land. This plea of the respondent no.1 is admitted by the appellant, while appearing in the witness box as DW-2. Even the witness DW-1 categorically admitted these facts. Both DW-1 and DW-2 admitted that the respondent no.1 has installed a tube well in the well situated in killa no.27. They admitted that the alleged passage goes up to the well only. They also admitted that the land adjacent to the passage belongs to the respondent no.1. The installation of factory by respondent no.1 is also admitted by



them in testimony. Therefore, it is very much evident that the appellant or the proforma respondent have no right either to use the passage upto the well or the well.

13. It is also evident that the appellant and other persons who have purchased plots from the respondent no.1 are in possession of their respective plots. The passage to the said plots has been provided to them. The appellant wants to use the passage of 3 karams alleging it to be a public passage. However, it is proved that the land on both the sides of the said passage belongs to the respondent no.1 and the respondent no.1 has installed his tube well in the well in question. Therefore, it is evident that the appellant and other persons have got no concern, whatsoever, either with the tube-well of the respondent no.1 with the passage in question.

14. The learned advocate for the appellant submitted that the respondent no.1 has no right to block the passage in question as the same is a public passage. This submission made by the learned advocate for appellant has no ground to stand upon. There is no evidence, whatsoever, to prove that the passage in question is a public passage and the appellant and other persons have right to use the same. The passage in question leads only upto the well in which the respondent no.1 has installed a tubewell. The appellant has neither any right to use the said tubewell nor to use the said passage. Rather, the respondent no.1 has right to raise construction of boundary wall on his land.”

9. It is the case of the plaintiff in the plaint that Rasta was carved out during consolidation proceedings on the Eastern side and on the Western side one karam Rasta was left on petition filed by father of the plaintiff by the consolidation authorities. So it is the case of the respondent-plaintiff that Rasta was carved out by the consolidation authorities during the consolidation proceedings. The provisions of The East Punjab Holdings



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(Consolidation and Prevention of Fragmentation) Act, 1948 deals with the consolidation proceedings and Section 2bb of the Act defines common purpose which reads as under:-

“[(bb) "common purpose" means any purpose in relation to any common need, convenience or benefit of the village] [and includes the following purposes:- (i) extension of the village Abadi; [-] (ii) providing income for the Panchayat of the village concerned for the benefit of the village community]. [(iii) village roads and paths; village drains, village well, ponds or tanks, village water courses or water channels; village bus stands and waiting places; manure pits; hada rori; public latrines; cremation and burial grounds; Panchayat Ghar; Janj Ghar; Grazing grounds; tanning places; mela grounds; public places of religious or charitable nature; and (iv) schools and play-grounds, dispensaries, hospitals and institutions of like nature; water works or tube wells whether such schools, play-grounds, dispensaries, hospitals, institutions, waterworks or tubewells may be managed and controlled by the State Government or not.”

10. As regards vesting of the area left for common purposes as per Section 2[(bb) of the Act, Section 23A has been inserted in the consolidation Act which reads as under :-

“23A. [Management and control of lands of common purposes to vest in Panchayats or State Government. [Substituted by Punjab Act 39 of 1963.]

- As soon as a scheme comes into force the management and control of all lands assigned or reserved for common purposes of the villages under Section 18, -[\(a\)](#)in the case of common purposes specified in sub-clause (iv) of clause (bb) of section 2 in respect of which the management and control are to be exercised by the State Government, shall vest in the State Government ; and



(b) in the case of any other common purpose, shall vest in the Panchayat of that village ;and the State Government or the Panchayat, as the case may be, shall be entitled to appropriate the income accruing therefrom for the benefit of the village community, and the rights and interests of the owners of such lands shall stand modified and extinguished accordingly :Provided that in the case of land assigned or reserved for the extension of village abadi or manure pits for the proprietors and non-proprietors of the village, such land shall vest in the proprietors and non-proprietors to whom it is given under the scheme of Consolidation.]”

11. As per Section 23A Sub-Section (b), the area meant for Village roads and paths as detailed in Section 2[(bb) [(iii) vests in Panchayat of the village. Both the Courts below has acted illegally as in para No. 14 of the impugned judgment learned First Appellate Court has held that the onus was upon the appellant-defendant to prove that the passage in dispute is a public passage. Similar is the finding of the learned Civil Judge in para No. 28 of the judgment of the learned Civil Judge.

12. Both the Courts below ignored the fact that the suit has been filed by the respondent-plaintiff claiming the Rasta as personal which was carved out in consolidation proceedings for the family of the plaintiff and it was for the plaintiff to prove the same by leading cogent and convincing evidence. The onus to prove a fact is always on a party whose cause would fail in the absence of proof of that fact and in the present case if the plaintiff fails to prove that the passage in dispute was carved out in consolidation proceedings, exclusively for the family of the plaintiff, the suit of the plaintiff would fail with regard to injunction preventing appellant-defendant from construction of wall from Point I to F of the site plan. Both the Courts



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below ignored the provisions of Section 2[(bb) and Section 23A of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The passages carved out during consolidation proceedings primarily vests in local authority and are meant for use by the public at large and it was for the respondent-plaintiff to prove that the passage was left out in consolidation proceedings exclusively for the family of plaintiff but plaintiff has not produced any record of the consolidation proceedings showing that the passage was exclusively meant for his family. So the findings recorded by the learned Courts below are certainly erroneous and are liable to be set aside with regard to the injunction granted in favour of respondent-plaintiff from raising construction of the wall from Point I to F in order to close the passage in dispute. Whereas both the Courts below were right in granting injunction with regard to restraining defendants from interfering in the peaceful possession of plaintiff over remaining land owned by the plaintiff.

13. So the appeal of the appellant defendant is partly allowed. The judgment and decree of the Courts below is partly modified and defendants are restrained from interfering in the peaceful possession of plaintiff of suit land owned by the plaintiff except the land of the passage which plaintiff has failed to prove to be owned by him. Decree sheet be drawn accordingly.

14. Since the main appeal stands decided, the miscellaneous application(s), if any, stand disposed of accordingly.

(VIRINDER AGGARWAL)
JUDGE

22.08.2025

P.Singh

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No